IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16/10/2003

Coram

The Honourable Mr. Justice P.K. MISRA

Writ Petition No.21893 of 2001

M/s. Nandh Products Promoters (P) Ltd.,
9 & 10, Ground Floor,
53, Manandi Jewels Plaza,
Nagarthanpet,
Main Road,
Bangalore 560 053 .. Petitioner

-Vs-

The District Forest Officer,
Salem Division,
Salem - 7. .. Respondent

Writ Petition filed under Article 226 of the Constitution of
India for the issue of a Writ of Certiorarified Mandamus as stated therein.

For petitioner: Mrs. Nalini Chidambaram, Senior Counsel
for Mr. S. Silambanan

For respondent: Ms. Selvi George
for Mr. V.S. Sethuraman
Special Government Pleader

:O R D E R

Heard the learned counsel appearing for the parties.

2. The petitioner is a Private Limited Company incorporated in Bangalore. The petitioner had participated in the auction for sale of sandal wood and sandal sapwood held by the District Forest Officer, Salem Division, the respondent in the present case and was the successful bidder. Subsequently, auction was confirmed and the petitioner had paid a sum of Rs.17,48,182. It is the case of the petitioner that even though substantial amount had been paid and the petitioner was prepared to pay the balance amount to take delivery, the respondent did not accept the same. At this stage, the respondent issued a show cause notice wherein it was pointed out that the firm of M/s. Sri Mahalakshmi Flour Mills, Bangalore had taken sandalwood on earlier occasion and was liable to pay a huge amount towards sales tax and penal interest and demurrge charges, and filed WP. No.2239 of 1994 and had

obtained interim order subject to condition to the effect that the bank guarantee towards sales tax amount of Rs.20,07,209 and Rs.80,31,289 towards penal interest and demurrage charge should be furnished. Even though initially such bank guarantee has been furnished, subsequently the firm, Mahalakshmi Flour Mills had failed to renew the bank guarantee and the firm was not taking any steps inspite of notice. It was further indicated in the notice that out of five partners in the firm, three were the directors of the present petitioner-company, and on the aforesaid basis, the petitioner was called upon to show cause as to why the amount of Rs.17,55,314 paid by the petitioner should not be adjusted against the accounts of M/s. Mahalakshmi Flour Mills, Bangalore.

3. Thereafter, the petitioner filed a reply indicating inter alia that the petitioner is incorporated in the Companies Act as a distinct entity and merely because two of the directors of the petitioner are also partners in the firm, both the entities cannot be treated as the same and the amount paid by the petitioner cannot be forfeited. Moreover, non-renewal of the bank guarantee in the special facts and circumstances of the case cannot be construed as if the the petitioner is in arrears of the said amounts warrenting forfeiture.

4. Subsequently, the petitioner filed WP Nos. 11198 and 11199 of 20 01 wherein a direction was given to the present respondent to pass final orders pursuant to the show cause notice dated 2.5.2001 within the stipulated period. Thereafter, the impugned order has been passed wherein the respondent has passed the order to the effect that the confirmation issued is withheld until renewal of the bank guarantee or until disposal of the appeal case in the High Court.

5. Such order has been challenged by the petitioner viz., on the ground that the petitioner which has been incorporated under the Companies Act is a distinct entity and merely because two directors are also partners in the firm viz., M/s. Sri Mahalakshmi Flour Mills, both the entities cannot be treated as the same. Learned counsel appearing for the petitioner has placed reliance upon the decision reported in 1897 AC 22 : 66 LJ Ch 35, (Saloman v. Saloman and Co).

6. Learned counsel appearing for the respondent, on the other hand, contended that even though in law, the company is a different entity, under some circumstances, the Court can lift the Corporate veil to find out the real position. For the aforesaid purpose, learned counsel for the respondent placed reliance upon the decision reported in AIR 1967 Supreme Court 819 (V54 C 175): ILR (1964) 1 Mad 393,(IT Commissioner, Madras v. Meenakshi Mills, Madurai) wherein the position of law is enunciated.

7. Law is well settled that a Company incorporated under the Companies Act has a separate legal entity. However, this principle has certain exceptions as enunciated in IT Commissioner, Madras v. Meenakshi Mills, Madurai(supra) wherein the following observations were made.

"It is well established that in a matter of this description the Income-tax authorities are entitled to pierce the veil of corporate entity and to look at the reality of the transaction. It is true that from the juristic point of

view the company is a legal personality entirely distinct from its members and the company is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members. But in certain exceptional cases the Court is entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade. For example, the Court has power to disregard the Corporate entity if it is used for tax evasion or to circumvent tax obligation".
Learned counsel for the respondent further cited the following decisions reported in
(i) AIR 1969 SUPREME COURT 93 (Juggilal V. Commissioner of Income Tax, UP.
(ii) AIR 1997 SUPREME COURT 361 (Union of India vi. Anand Singh Bisht,

(iii) (1996) 4 SUPREME COURT CASES 622 (Delhi Development Authority v. Skipper Construction Co.(P) Ltd., and another,

(iv) (2000) 3 SUPREME COURT CASES 312 (Subhra Mukherjee and another v. Bharat Coking Coal Ltd., and others)

(v) (1998) 3 SUPREME COURT CASES 681, (Calcutta Chromotype Ltd., vs. Collector of Central Excise Calcutta.

In all these decisions the principle enunciated in the Meenakshi Mill case (supra) has been reiterated.

8. The principles enunciated in these decisions would be applicable to a particular factual position. In the present case, in the impugned order nothing has been indicated as to why the respondent considered the Firm and the Company to be the same legal entity.

9. It is found that some partners in the firm are the directors of the present petitioner-company. This by itself would not conclusively establish that both the entities are the same. However, along with this aspect, there may be other circumstances from which one could reasonably come to the conclusion that both the entities are the same, or so closely interlinked that the liability of one can be treated to as the liability of the other. For the aforesaid purpose, many relevant facts such as the date of incorporation of the company, memorandum of association, articles of association, names of promoters/ shareholders who had found the company and their relationship with the partners of the firm, and the purpose for which the company was incorporated would be material. For example, if the company was incorporated after the bank guarantee had lapsed or about to lapse or in close proximity of the time relating to auction, can be a relevant factor. Similarly, if it is found that the petitioner had participated in the auction for the first time, and there was no history of the petitioner participating in such auction, such circumstance can be considered to be a relevant factor. If apart from identity of the same directors, it is found that the other shareholders/directors of the company had close relationship with the partners of the Firm, such aspect would also be a relevant circumstance. Unfortunately, however, in the impugned order, these aspects

have not been considered and a bald order has been passed.

10. In the facts and circumstances of the case, I think interests of justice would be served by quashing the impugned order and directing the respondent to consider the matter afresh keeping in view the relevant circumstances. For the aforesaid purposes, an opportunity of hearing should be given to the petitioner. Since the question of date of incorporation and details relating to memorandum of association and articles of association are matters within the special knowledge of the petitioner, the petitioner is directed to furnish all those particulars. Similarly, if any other querry is raised by the respondent relating to details of incorporation of the petitioner company, such details should also be furnished by the petitioner. If the petitioner does not produce copies of relevant documents or deliberately withholds any relevant material it would be open to the respondent to draw any inference in accordance with law. The process of fresh consideration may be completed on or before 30th January, 2004. The petitioner is permitted to appear b efore the respondent either through any advocate or authorised agent on 28.11.2003 on which date the respondent may hold enquiry or fix any convenient date for holding enquiry.

11. Subject to the above direction, the writ petition is disposed of. No costs.

Index: Yes
Internet: Yes

asvm

To
The District Forest Officer,
Salem Division,
Salem - 7.